IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In Re the Marriage of	)	
	)	No. 55319-4-I
LISA ANNE CRAZE,	)	
	)	
Appellant,	)	DIVISION ONE
	)	
and	)	
	)	
ANDREW COLIN CRAZE,	)	UNPUBLISHED OPINION
	)	
Respondent.	)	FILED: June 19, 2006

Dwyer, J. — In this marital dissolution action, Andrew Craze contends that the trial court erred by (1) finding that it had personal jurisdiction over him, (2) denying his *forum non conveniens* motion, (3) entering a property distribution order that was inequitable and contrary to the federal tax code, and (4) ordering him to pay attorney fees. Finding no error, we affirm.[1]

FACTS

The material facts in this case are not disputed. Andrew and Lisa Craze began dating in July 1994.[2] At that time, both of them had been living and working in Washington for several years. In February 1995, Lisa moved into

[1] We also deny various motions brought by the parties during the pendency of this appeal.

[2] To avoid confusion between the parties, they are hereafter referred to by their first names.

Andrew's house in Redmond, Washington. They then purchased a house in Ohio, which they moved into soon after their June 8, 1995 wedding in Seattle. They rented out the Redmond house until selling it in 2001. During those years, the couple also invested a large sum of money in a business that ultimately went bankrupt. They separated in October 2002. Lisa moved back to Seattle.

On June 26, 2003, Lisa filed for a dissolution of marriage in Washington. Andrew was properly served in Ohio under the Washington long arm statute.[3] Andrew retained a Washington attorney and the parties hired a Washington mediator.

On December 18, Andrew voluntarily came to Seattle to attend a mediation session. During the mediation, Lisa's attorney served Andrew with a summons and petition for dissolution of marriage.

On January 14, 2004, Andrew filed his response to Lisa's petition and raised jurisdictional defenses. Six days later, on January 20, Andrew filed for divorce in Ohio. Lisa filed a motion to dismiss or stay the Ohio divorce action. On April 2, the Ohio court stayed that proceeding.

On April 26, 2004, Andrew filed a motion in King County Superior Court to dismiss Lisa's petition on partial summary judgment asserting lack of *in personam* jurisdiction and *forum non conveniens*. Under the Washington action's case schedule the discovery period ended on May 10, 2004, while

[3] RCW 4.28.185.

Andrew's motion was pending. The parties named only themselves as trial witnesses.

On May 28, 2004, King County Superior Court Judge Mary Yu denied Andrew's motion for summary judgment, finding that the court had personal jurisdiction over the parties for the purpose of determining the parties' monetary issues and that Washington was the proper forum to resolve the various issues presented in the dissolution action.

On June 14, 2004, a one-day trial was conducted before King County Superior Court Judge Bruce Hilyer. The next day, Judge Hilyer issued his oral decision granting the decree of dissolution and distributing the parties' assets and liabilities. Andrew moved the court for reconsideration. Lisa opposed the motion and asked for attorney fees, arguing that Andrew had engaged in a pattern of intransigence. Andrew then filed further pleadings regarding reconsideration and Lisa's motion for fees.

On August 6, 2004, the trial court denied Andrew's motion for reconsideration. On August 24, the trial court granted Lisa's motion for attorney fees, finding Andrew's repeated efforts to assert jurisdiction in Ohio were "frivolous, duplicative, and recalcitrant." Andrew then filed several objections to the court's findings and conclusions.

On October 1, 2004, the trial court entered findings of fact and conclusions of law. With respect to Andrew's arguments that the court did not

have personal jurisdiction over him, the court found:

> The facts below establish personal jurisdiction over the respondent.
>
> … During their marriage Respondent continued to own rental property in this state for a number of years, earned income from his activities in this state and conducted business in this state.
>
> Other:
>
> Jurisdiction was also established by personal service in this jurisdiction on December 18, 2004 in addition to long arm jurisdiction which was established by personal service outside the jurisdiction in Ohio on June 30, 2003, in conjunction with adequate minimum contacts sufficient to confer in personam jurisdiction, as ruled by the court on May 28, 2004, which ruling is incorporated by reference into these findings and conclusions. Jurisdiction is in Washington State and venue is properly laid in King County.

In response to Andrew's *forum non conveniens* argument, the court found:

> The court has considered arguments on the issue of *forum non conveniens* and has found that Washington State is a proper forum for this dissolution for several reasons. 1) There were no issues of conflicts of law that would require the application of Ohio Law and the Respondent admitted that Washington Law applied to this matter. 2) The Respondent had named no witnesses outside of the State of Washington except himself and therefore there was no persuasive factual basis to determine that there would be inconvenience to witnesses requiring a finding of inconvenient forum sufficient to dismiss this case from Washington State's courts. 3) Title to real property outside the state of Washington was never presented to this court in any way that the court lacked jurisdiction to rule on ownership of real property located outside the state of Washington.

In its conclusions, the court stated that Andrew's arguments that Washington was not a convenient forum "were academic and inapplicable." It then concluded that,

> Given the overwhelming evidence of Respondent's

> extensive contact with this state prior to and during the marriage, and the applicability of Peterson,[4] and the actual in state service of process, Respondent's arguments to avoid Washington jurisdiction rose to the level of intransigence warranting an award of attorney fees to the Petitioner for the costs she incurred in dealing with Respondent's intransigence.

The court also incorporated its prior order granting Lisa's motion for attorney fees, wherein the court found Andrew's efforts to challenge the court's jurisdiction and change forum violated Civil Rule 11,[5] and ordered Andrew to pay $12,810 for Lisa's legal fees.

Andrew appeals.

DISCUSSION

I. Personal Jurisdiction

Andrew first argues that the trial court erred in finding that it had personal jurisdiction over him for the purpose of deciding the parties' monetary issues.

"A trial court's ruling on personal jurisdiction is a question of law reviewable de novo when the underlying facts are undisputed." Precision Lab. Plastics, Inc. v. Micro Test, Inc., 96 Wn. App. 721, 725, 981 P.2d 454 (1999).

Lisa argues here, as she argued before the trial court, that under In re Marriage of Peterson, 68 Wn. App. 702, 843 P.2d 1107 (1993), the trial court had personal jurisdiction over this case because Andrew was personally served

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[4] The trial court's reference was to In re Marriage of Peterson, 68 Wn. App. 702, 843 P.2d 1107 (1993), upon which Lisa relied to establish personal jurisdiction following service on Andrew in Washington.

[5] Under CR 11, a court may, upon motion or upon its own initiative, impose sanctions against a party whom the court finds did not perform a reasonable inquiry or did not properly represent the law and facts to the trial court.

in Washington while he was in the state on business related to this dissolution. Peterson holds that personal service coupled with minimum contacts and voluntary presence in the jurisdiction is "sufficient to confer jurisdiction." 68 Wn. App. at 704.

Andrew concedes that he was personally served in Washington while he was present to mediate this dispute, yet he contends that the service should be deemed void because it was accomplished through "trickery." We are not persuaded.

Andrew fails to articulate any basis for distinguishing Peterson. Instead, Andrew relies on cases from other jurisdictions where the parties asserting personal jurisdiction over the out-of-state defendants utilized deceptive schemes to draw those defendants into the foreign state to be served. See, e.g. Commercial Air Charters, Inc. v. Sundorph Aeronautical Corp., 57 F.R.D. 84 (D. Conn. 1972); Gumperz v. Hofmann, 245 A.D. 622, 283 N.Y.S. 823 (N.Y. App. Div. 1935), aff'd, 271 N.Y. 544, 2 N.E.2d 687 (1936).

The cases cited by Andrew are inapposite, as the record does not contain any factual support for Andrew's suggestion that he was tricked into being in Washington when he was served. Quite the opposite, Andrew and his counsel agreed to participate in the mediation knowing (1) that Lisa wanted to dissolve the marriage here, (2) that she had already utilized Washington's long-arm statute to serve him, and (3) that she might serve him personally at the

mediation session since Washington law does not prohibit so doing. Accordingly, we find no merit in Andrew's attempt to defeat service by claiming "trickery."

We also reject Andrew's related argument that this court should apply the rule established in K Mart v. Gen-Star Industries, 110 F.R.D. 310 (E.D. Mich. 1986). In K Mart, the court adopted a "bright line" rule prohibiting service unless the plaintiff warns the defendant before defendant enters the jurisdiction that defendant may be served. Pursuant to this rule, when settlement talks fail plaintiff must give defendant an opportunity to leave the jurisdiction before service is made. Id. at 313. Andrew fails to appreciate that Washington has no such rule.

Andrew also ignores compelling criticism of the K Mart rule, such as that stated in Manitowoc W. Co. v. Montonen, 250 Wis. 2d 452, 639 N.W.2d 726 (2002), and Comerica Bank - Cal. v. Sierra Sales, 1994 U.S. Dist. LEXIS 21542 (N.D. Cal. Sept. 29, 1994). In Manitowoc, the Supreme Court of Wisconsin rejected the K Mart rule and articulated the following concerns:

> That rule leaves questions such as the following ripe for contention: What constitutes a settlement negotiation? Was the served party in the jurisdiction for the sole purpose of those negotiations? What happens if it is the primary purpose but not the sole purpose? When does one purpose end and another begin? […] [S]till further factual inquiries are added to the mix: Did the plaintiff "invite" or "suggest" the settlement negotiations? In any given case, what is a "reasonable period" of time before and after a settlement negotiation in which a person may expect to remain immune from service?

639 N.W.2d at 732. We share these concerns.

Accordingly, we reject Andrew's claim that the personal service upon him should be declared void for "trickery." There is no evidence that Andrew's presence in the state was induced by fraud or deception and Washington law does not proscribe the method of personal service employed by Lisa.

Andrew's arguments regarding the sufficiency of his contacts with Washington are similarly unavailing. A party has sufficient jurisdictional minimum contacts with a forum state when that party "purposefully avails himself or herself of the privilege of conducting activities there, and of the benefits and protection of its laws." In re Marriage of Tsarbopoulos, 125 Wn. App. 273, 286, 104 P.3d 692 (2004).

First, as discussed, Andrew was voluntarily in Seattle to participate in a mediation of this dissolution when he was served for the second time. Second, it is an uncontested fact that Andrew purchased and lived in real property in Washington prior to the marriage, which he then held jointly with his wife for its rental income during six of the seven years of their marriage while they resided in Ohio. In so doing, Andrew systematically availed himself of the privileges and protections of this state from years prior to his marriage with Lisa to just before the end of his marriage to Lisa, regardless of his domicile elsewhere. The trial court properly found that Andrew's contacts with this state were not so attenuated as to deprive the Washington court of personal jurisdiction over him.

In sum, we find that there was valid personal service on Andrew, which, coupled with his minimum contacts with and voluntary presence in the state of Washington, was sufficient to confer personal jurisdiction to distribute the parties' assets and liabilities.[6]

II. *Forum Non Conveniens*

Andrew also assigns error to the trial court's refusal to dismiss Lisa's petition under *forum non conveniens*. A trial court's decision on *forum non conveniens* is reviewed under the abuse of discretion standard to determine if the decision was manifestly unfair, unreasonable, or untenable. Myers v. Boeing Co., 115 Wn.2d 123, 794 P.2d 1272 (1990).

The Myers court, quoting extensively from Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 67 S. Ct. 839, 91 L. Ed. 1055 (1947), set forth the private and public interests to be weighed and balanced in determining a *forum non conveniens* claim:

> The private interests to be considered are as follows:
>
> > the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.
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> Gulf Oil, at 508.
>
> …
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> The … public interest factors to be considered:

[6] Accordingly, we need not address the parties' arguments regarding whether the court acquired personal jurisdiction over Andrew under Washington's long-arm statute or by Andrew's consent or waiver.

> Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.
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> Gulf Oil, at 508-09.

Myers, 115 Wn.2d at 128-29.

The trial court herein carefully applied each of the relevant factors set forth above to the facts of this case. The record demonstrates that the factors either weighed in favor of Washington as the forum or, as with the costs and convenience of the parties, were neutral in their effect. The trial court did not abuse its discretion in denying Andrew's motion to dismiss this matter under *forum non conveniens*.

III. Asset Distribution

Andrew also argues that the trial court abused its discretion in distributing the parties' assets and that the trial court's property division order should be vacated.[7] He specifically challenges two aspects of the order: (1) the amount of

[7] We do not review Andrew's assignment of error to the trial court's finding of fact 2.20(h) awarding Lisa possession of her car without an offsetting payment to Andrew because, contrary to RAP 10.3(a)(5), he does not provide any argument in support of that claim. An assignment of error is deemed abandoned if it is not argued in the party's brief. Valley View Indus. Park v. City

the award to Lisa to offset her interest in the Ohio house, which Andrew claims was inequitable, and (2) the award to Lisa of half of the community's prospective income tax savings in the form of “loss credits forward deductions,” which Andrew claims is both punitive and prohibited by the federal tax code.

In its disposition of the parties' property in a proceeding for dissolution of marriage, the trial court must make an award that is “just and equitable after considering all relevant factors." RCW 26.09.080. Relevant factors include: (1) the nature and extent of the community property; (2) the nature and extent of the separate property; (3) the duration of the marriage; and (4) the economic circumstances of each spouse at the time the division of property is to become effective. A trial court has considerable discretion when dividing property in a dissolution proceeding. The court's disposition will not be interfered with on appeal unless there is a showing of a manifest abuse of discretion. In re Marriage of Williams, 84 Wn. App. 263, 267, 927 P.2d 679 (1996).

At trial, the parties agreed that Andrew should be awarded the Ohio house but disagreed on the amount of money Lisa should receive to offset her interest in the house. The parties purchased the house for $382,000, with a down payment of $171,500, of which Lisa paid $10,000.

The parties submitted trial briefs with proposed asset distribution recommendations to the trial court. However, those documents are not in the

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of Redmond, 107 Wn.2d 621, 630, 733 P.2d 182 (1987).

record on appeal. In argument, Lisa's counsel told the trial court that Lisa was entitled to a $40,000 payment for her interest in the house. Andrew's counsel responded, "our position is closer to $29,000." 2 Verbatim Report of Proceedings (June 14, 2004) at 55. The court valued the house at $465,000 and awarded it to Andrew. The court then awarded Lisa $39,629 to offset her separate property contribution to the house purchase and her community interest in the house's appreciation during the marriage.

On appeal, Andrew argues that the trial court should have awarded Lisa $21,521. He cites several Washington and Ohio cases in support of that calculation. Yet he provides no indication that these arguments were presented to the trial court. Andrew has the burden of complying with applicable rules and presenting an adequate record for review on appeal. In re Marriage of Haugh, 58 Wn. App. 1, 790 P.2d 1266 (1990). "Reference to the record must be included for each factual statement." RAP 10.3(a)(4). Arguments not raised in the trial court will generally not be considered on appeal. Doe v. Puget Sound Blood Ctr., 117 Wn.2d 772, 780, 819 P.2d 370 (1991). Because the calculations and arguments presented to the trial court are not in the record, we will not consider Andrew's related arguments. Moreover, because Andrew has not demonstrated any abuse of discretion related to the Ohio house offset award, we affirm the trial court's ruling.

Similarly, we will not consider Andrew's argument regarding the trial

court's division of the tax "loss carry forward deductions" because it was not raised at trial and cannot be raised for the first time on appeal. RAP 2.5(a). Any challenge to the legality of the distribution of this asset must first be addressed to the trial court. In short, the trial court never having been called upon to consider this issue, it cannot now be said that the court abused its discretion with regard to it.

IV. Attorney Fees

Andrew next argues that the trial court abused its discretion when it found that his conduct in litigation was intransigent and that he violated CR 11 by persistently advancing frivolous arguments regarding jurisdiction and *forum non conveniens*. Andrew contends that the trial court's award to Lisa of $12,810 for attorney's fees and costs should be vacated.

Washington law recognizes that attorney fees may be awarded against a party whose conduct in litigation is intransigent or who acts in bad faith. In re Marriage of Eide, 1 Wn. App. 440, 445, 462 P.2d 562 (1969). A party may recover fees for intransigent conduct without regard to the financial imperative of RCW 26.09.140. In re Marriage of Crosetto, 82 Wn. App. 545, 564, 918 P.2d 954 (1996); RCW 26.09.140 (providing for attorney fees based on the financial resources of each party maintaining or defending any proceeding under the chapter). Also, the imposition of CR 11 sanctions lies within the sound discretion of the court and will only be reversed when the trial court abuses its

discretion. Watson v. Maier, 64 Wn. App. 889, 891, 827 P.2d 311 (1992).

The trial court found that Andrew's repetitious arguments constituted intransigence and made this case needlessly expensive and contentious. Another court might have viewed Andrew's behavior differently. However, the test for abuse of discretion is not whether another court might or even would have ruled the same way. The test is whether the trial court based its decision on tenable grounds and reasons. Coggle v. Snow, 56 Wn. App. 499, 506-07, 784 P.2d 554 (1990). As explained therein,

> [One] scholarly commentator has stated that the central idea of discretion is *choice*: the court has discretion in the sense that there are no "officially wrong" answers to the questions posed. Rosenberg, Judicial Discretion of the Trial Court, Viewed From Above, 22 Syracuse L. Rev. 635, 636-37 (1971).

Id. at 505. Indeed, reversal is not appropriate unless "no reasonable judge would have reached the same conclusion." Sofie v. Fibreboard Corp., 112 Wn.2d 636, 667, 771 P.2d 711, 780 P.2d 260 (1989). On these facts, we conclude that there is no "officially wrong" answer to the question posed. We cannot say that no reasonable judge would have reached the same conclusion as the trial court. Therefore, we cannot and do not find an abuse of discretion. Accordingly, we affirm the trial court's award of attorney fees and costs to Lisa.

However, we do not agree with Lisa's contention, in support of her requests for fees and costs on appeal, that this appeal was frivolous and an exercise in further intransigence. An appeal is frivolous "'if no debatable issues

are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists.'" Harrington v. Pailthorp, 67 Wn. App. 901, 913, 841 P.2d 1258 (1992) (quoting In re Marriage of Greenlee, 65 Wn. App. 703, 710, 829 P.2d 1120 (1992)). While we resolve the issues presented in Lisa's favor, we do not view this appeal as being so devoid of merit that an award of attorney fees is justified. Watson, 64 Wn. App. at 901.

V. Motions on Appeal

Finally, we address pleadings and motions brought by appellate counsel. First, Andrew's February 28, 2006 objection to Lisa's supplemental designation of clerk's papers is denied because Lisa's motion to supplement the clerk's papers has been previously granted. Second, Andrew's March 7, 2006 objection to Lisa's statement of additional authorities is denied as moot because Lisa never designated the exhibits that were incorrectly cited therein. Third, we deny (a) Lisa's March 3, 2006 motion to strike Andrew's reply brief and for sanctions and (b) Andrew's March 16, 2006 motion to strike Lisa's "flurry of recent pleadings," and for terms because assuming, without deciding, that violations of the Rules of Appellate Procedure have occurred, we have not been unduly biased by them, nor is there any reason to believe that the parties have been unduly burdened.

Affirmed.

Dwyer, J.

WE CONCUR:

Appelwick, C.J.

Baker, J.